

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DURAN IRVIN,)	
Plaintiff,)	
)	
v.)	C.A. No. 04-10295-WGY
)	
ANDREA CABRAL, et al.)	
Defendants.)	

MEMORANDUM AND ORDER

For the reasons set forth below, plaintiff is directed to either pay the requisite filing fee or submit an Application to Proceed Without Prepayment of Fees and Affidavit or this action will be dismissed without prejudice.

BACKGROUND

On January 20, 2004, plaintiff, now incarcerated at the Suffolk County House of Correction, submitted for filing a pro se class-action complaint pursuant to 42 U.S.C. § 1983 naming as defendants Sheriff Andrea Cabrawl and Deputy Superintendent Mary Mastrorilli. See Complaint, Docket No. 1. With his complaint, plaintiff filed an affidavit in support of class action and two declarations in support of request to proceed in forma pauperis. See Docket Nos. 2-4. Because these documents were erroneously filed in Irvin v. Cabral, et al., C.A. No. 04-10033-REK, they were returned to the clerk for the random assignment of a new civil action number. The clerk

assigned the instant action Civil Action No. 04-10295-WGY.

DISCUSSION

A party filing a civil complaint in this Court must either (1) pay the \$150.00 filing fee or (2) file an Application to Proceed Without Prepayment of Filing Fees and Affidavit. See 28 U.S.C. 1914(a) (\$5.00 filing fee); 28 U.S.C. 1915 (proceedings in forma pauperis).

Because plaintiff is incarcerated, he is advised that pursuant to 28 U.S.C. § 1915(b)(1), prisoners are required to pay the full amount of the filing fee. If plaintiff files an application to proceed without prepayment of fees, the Court will direct the appropriate prison official to withhold from his prison account and pay to the court an initial payment towards the \$150.00 filing fee. The appropriate prison official will also be directed to collect from plaintiff's prison account on a continuing basis each month until such time as the \$150.00 statutory filing fee is paid in full.

Plaintiff is further advised that if he pays the fee or files an Application to Proceed Without Prepayment of Fees and Affidavit, his complaint is subject to preliminary screening pursuant to 28 U.S.C. §§ 1915, 1915A.

Finally, the Court notes that the complaint misspells the name of the Suffolk County Sheriff. The Clerk shall be

directed to correct the docket and to list the two defendants as follows: Sheriff Andrea Cabral and Deputy Superintendent Mary Mastrorilli.

ORDER

Based upon the foregoing, it is hereby ORDERED

1. If plaintiff wishes to proceed with this action, he shall file, within forty-two (42) days of the date of this Procedural Order, an Application to Proceed Without Prepayment of Fees and Affidavit or pay the \$150.00 filing fee or this action will be dismissed without prejudice. The Clerk is directed to send plaintiff an Application to Proceed Without Prepayment of Fees and Affidavit with this Order.
2. The Clerk shall correct the docket so that it lists two defendants as follows: Andrea Cabral and Mary Mastrorilli.

SO ORDERED.

Dated at Boston, Massachusetts, this 26th day of February, 2004.

/s/ William G. Young

WILLIAM G. YOUNG
CHIEF JUDGE
UNITED STATES DISTRICT COURT